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EXAMINER

UPTON, CHRISTOPHER

ART UNIT	PAPER NUMBER
1724	

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	077746	Jowett
Examiner	Group Art Unit	
Upton	1724	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

Responsive to communication(s) filed on \_\_\_\_\_

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1-60 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-4, 6-12, 15, 18, 21-23, 25-31, 33-40, 44-58 is/are rejected.

Claim(s) 5, 13, 14, 16, 17, 19, 20, 24, 32, 41-43, 59 and 60 is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

**Application Papers**

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper No(s). 7

Notice of Reference(s) Cited, PTO-892

Notice of Draftsperson's Patent Drawing Review, PTO-948

Interview Summary, PTO-413

Notice of Informal Patent Application, PTO-152

Other \_\_\_\_\_

**Office Action Summary**

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1. The numbering of claims is not accordance with 37 CFR 1.126. The original numbering of the claims must be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When claims are added, except when presented in accordance with 37 CFR 1.121(b), they must be renumbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 58 (second occurrence) and 59 been renumbered 59 and 60.

Also, the dependency of claim 60 should be clarified, as to whether it depends from claim 58 or newly renumbered claim 59. For examination purposes, claim 59 has been assumed, due to the recitation of sewage in claim 59 and a dwelling in claim 60.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the corrugated sheet of claim 13, the recirculation system of claim 22, the pump and siphon of claim 40 and the inlet pipe of claim 42 must be shown or the feature(s) cancelled from the claim(s). No new matter should be entered.

3. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 lacks antecedent basis for "said air passage."

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, 6, 7, 15, 18, 21, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Vail.

Vail discloses an elongated trough containing a porous microbial treatment material, as claimed.

6. Claims 3, 8, 33-38, 44-51 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vail et al.

Claims 3, 8, 33-38, 44-51 and 58 differ from Vail in recitation of sizing, specifically being narrower than the ten foot width shown by Vail. It is submitted

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that the specific size of the device of Vail would have been an obvious matter of optimization for one skilled in the art, depending on the quantity to be treated, the amount of contamination, and other variables, and therefore fails to patentably distinguish over Vail. Note that Vail discloses that the ten foot width is typical, and therefore implies that it may be adjusted.

7. Claims 6, 7, 9, 15 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Zaluski et al.

Zaluski discloses an elongated trough containing a porous microbial treatment material, as claimed.

8. Claims 1-4, 8, 33-35, 37, 38, 44-50 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zaluski.

Claims 1-4, 8, 33-35, 37, 38, 44-50 and 58 differ from Zaluski in recitation of sizing, both length and width. It is submitted that since Zaluski does not disclose a specific size, that the sizing would have been a matter of optimization for one skilled in the art, depending on the quantity to be treated, the amount of contamination, and other variables, and therefore fails to patentably distinguish over Zaluski.

9. Claims 1, 2, 4, 6, 7, 9, 15, 22, 23 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Scanzillo.

Scanzillo discloses an elongated trough containing a porous microbial treatment material, as claimed.

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10. Claims 6, 7, 9-12, 15, 22, 23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colburn.

Colburn discloses an elongated trough containing a porous rolled plasticized fiber microbial treatment material, which may be used in parallel, substantially as claimed. While Colburn does not specifically disclose a 3:1 length:width ratio, it is submitted that the drawings obviously appear to show a greater ratio.

11. Claims 33-37, 39, 40 and 44-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ushitora et al or Kirk et al.

Ushitora and Kirk disclose a series of separated treatment troughs, substantially as claimed. While the references do not specifically disclose a length of over two meters, or the specific length to depth ratios of the claims, it is submitted that such piping systems typically are many meters in length and a few inches in diameter.

12. Claims 33-38 and 44-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moss.

Moss discloses a septic tank made of piping, substantially as claimed. While Moss does not specifically disclose a length of over two meters, or the specific length to depth ratios of the claims, it is submitted that Moss discloses that "any number of sections of a length and diameter depending on the capacity of the tank and material

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available" may be used (page 1, lines 52-56). Therefore, it is submitted that such recitations fail to patentably distinguish over Moss.

13. Claims 5, 13, 14, 16, 17, 19, 20, 24, 32, 41-43, 59 and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The recitation of an elongated treatment system having the structure recited in claims 1, 6 or 33 in combination with the limitations recited by claims 5, 13, 14, 16, 24, 28, 32, 41 or 59 patentably distinguish over the prior art of record.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Other references of interest include Niimi, Smith and Webb.

15. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.



CHRISTOPHER UPTON  
PRIMARY EXAMINER